

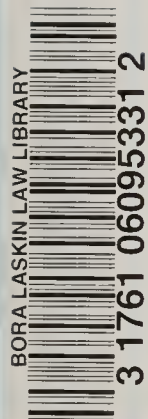
**INTELLECTUAL PROPERTY:
COPYRIGHT, TRADE-MARKS, PATENTS**

2005/2006

VOLUME 1: COPYRIGHT

**Ariel Katz
Faculty of Law
University of Toronto**

**These materials are solely for the classroom use of students in the
Faculty of Law, University of Toronto**



BORA LASKIN LAW LIBRARY
SEP 20 2005
FACULTY OF LAW
UNIVERSITY OF TORONTO

**INTELLECTUAL PROPERTY:
COPYRIGHT, TRADE-MARKS, PATENTS**

2005/2006

VOLUME 1: COPYRIGHT

**Ariel Katz
Faculty of Law
University of Toronto**

**These materials are solely for the classroom use of students in the
Faculty of Law, University of Toronto**



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

<https://archive.org/details/intellectualprop01katz>

Volume 1: Copyright Table of Contents

I. Introduction

J. McKeown, "The Definition and Nature of Copyright," in J. McKeown, <i>Fox: Canadian Law of Copyright and Industrial Designs</i> , 3rd ed. (Toronto: Carswell, 2000).....	1
<i>Compo Co. Ltd. v. Blue Crest Music Inc.</i> (1979), 105 D.L.R. (3d) 249 (S.C.C.).....	5
<i>Bishop v. Stevens</i> (1990), 72 D.L.R. (4 th) 97 (S.C.C.).....	5
<i>Theberge v. Galerie d'Art du Petit Champlain Inc.</i> , [2002] 2 S.C.R. 336	6

II. Prerequisites for Copyright

A. Originality

<i>University of London Press Ltd. v. University Tutorial Press Ltd.</i> , [1916] 2 Ch. 601.....	13
<i>Kilvington Brothers Ltd. v. Goldberg</i> (1957), 8 D.L.R. (2d) 768 (Ont. H.C.).....	15
<i>G.A. Cramp & Sons Ltd. v. Frank Smythson Ltd.</i> , [1944] 2 All E.R. 92 (H.L.).....	18
<i>Caron v. Association des Pompiers de Montreal Inc.</i> (1992), 42 C.P.R. (3d) 292 (F.C.T.D.).....	25
<i>Walter v. Lane</i> , [1900] A.C. 539 (H.L.).....	31
<i>U & R Tax Services Ltd. v. H & R Block Canada Inc.</i> (1995), 62 C.P.R. (3d) 257 (F.C.T.D.).....	43
<i>Tele-Direct (Publications) Inc. v. American Business Information Inc.</i> (1997), 76 C.P.R. (3d) 296 (F.C.A.).....	49
<i>CCH Canadian Ltd. v. Law Society of Upper Canada</i> , [2004] S.C.J. No. 12.....	60

B. Idea/Expression Dichotomy

<i>Nichols v. Universal Pictures Corporation</i> , 45 F.(2d) 119 (2 nd Cir. 1930).....	87
<i>Moreau v. St. Vincent</i> , [1950] 3 D.L.R. 713 (Ex.Ct.).....	92
<i>Deeks v. Wells</i> , [1931] O.R. 818 (C.A.).....	97
<i>Hollinrake v. Truswell</i> , [1894] 3 Ch. 420 (C.A.).....	98
<i>Cuisenaire v. South West Imports Ltd.</i> (1968), C.P.R. 76 (S.C.C.).....	103
<i>Bulman Group Ltd. v. 'One-Write' Systems Ltd.</i> (1982), 62 C.P.R. (2d) 149 (F.C.T.D.).....	107
<i>Baker v. Selden</i> , 101 U.S. 99 (1879).....	113

C. Merger

<i>Morrisey v. Procter & Gamble Company</i> , 379 F.2d 675 (1 st Cir.1967).....	118
<i>Herbert Rosenthal Jewelry Corp. v. Kalpakian</i> , 446 F.2d 738 (9 th Cir.1971).....	120
<i>Apple Computer Inc. v. Mackintosh Computers Ltd.</i> (1986), 28 D.L.R. (4 th) 178 (F.C.T.D.).....	124
<i>Apple Computer Inc. v. Mackintosh Computers Ltd.</i> (1990), 71 D.L.R. (4 th) 95 (S.C.C.).....	130
<i>Les Promotions Atlantiques v. Hardcraft Industries</i> (1987), 17 C.P.R. (3d) 552 (F.C.T.D.).....	131
<i>Delrina Corp. v. Triolet Systems Inc.</i> (1993), 47 C.P.R. (3d) 1 (Ont. Gen. Div.).....	132
<i>Delrina Corp. v. Triolet Systems Inc.</i> (2002), 58 O.R. (3d) 339 (Ont. C.A.).....	133

D. Fixation

<i>Canadian Admiral Corporation Ltd. v. Rediffusion Inc.</i> , [1954] Ex. C.R. 384.....	146
<i>Gould Estate v. Stoddart Publishing Co.</i> (1996), 30 O.R. (3d) 520 (Gen.Div.).....	147

III. Ownership

<i>Gould Estate v. Stoddart Publishing Co.</i> (1998), 39 O.R. (3d) 545 (C.A.).....	150
<i>Kantel v. Grant</i> , [1933] Ex. C.R. 84.....	156
<i>Donoghue v. Allied Newspapers Ltd.</i> , [1938] 1 Ch. 106.....	164

IV. Subject Matter

<i>Exxon Corporation v. Exxon Insurance Ltd.</i> , [1982] 1 Ch. 119 (C.A.).....	168
<i>Ladbroke (Football) Ltd. v. William Hill (Football) Ltd.</i> , [1964] 1 All E.R. 465 (H.L.).....	173
<i>Slumber-Magic Adjustable Bed Co. Ltd. v. Sleep-King Adjustable Bed Co. Ltd.</i> (1984), 3 C.P.R. (3d) 81 (B.C.S.C.).....	189
<i>Kelly v. Morris</i> (1866), 35 L.J. Ch. 423.....	192
<i>British Columbia Jockey Club v. Standen</i> (1985), 8 C.P.R. (3d) 283 (B.C.C.A.).....	194
<i>Feist Publications Inc. v. Rural Telephone Service Co.</i> , 499 U.S. 340 (1990).....	199
<i>DRG Inc. v. Datafile Ltd.</i> (1987), 18 C.P.R. (3d) 538 (F.C.T.D.).....	212
<i>Apple Computer Inc. v. Mackintosh Computers Ltd.</i> (1990), 71 D.L.R. (4 th) 95 (S.C.C.).....	218

V. Infringement

A. Establishing Infringement

<i>Francis Day & Hunter v. Brøn</i> , [1963] 1 Ch. 587 (C.A.).....	222
<i>Boutin v. Bilodeau</i> (1992), 46 C.P.R. (3d) 395 (Que.C.A.).....	236
<i>Boutin v. Bilodeau</i> (1994), 54 C.P.R. (3d) 160 (S.C.C.).....	239

B. Substantial Part: Literal and Non-literal Copying

<i>Hawkes and Son (London) Ltd. v. Paramount Film Service Ltd.</i> , [1934] 1 Ch. 593 (C.A.).....	240
<i>King Features Syndicate Inc. v. O. and M. Kleeman Ltd.</i> , [1941] A.C. 417 (H.L.).....	246
<i>Preston v. 20th Century Fox Canada Ltd.</i> (1990), 33 C.P.R. (3d) 242 (F.C.T.D.).....	250
<i>Computer Associates International Inc. v. Altai Inc.</i> , 982 F.2d 693 (2 nd Cir. 1992).....	278
<i>Lotus Development Corp. v. Borland International Inc.</i> , 49 F.3d 807 (1 st Cir. 1995).....	301
<i>Delrina Corp. v. Triolet Systems Inc.</i> (2002), 58 O.R. (3d) 339 (Ont. C.A.).....	133
<i>Theberge v. Galerie d'Art du Petit Champlain Inc.</i> , [2002] 2 S.C.R. 336	318
<i>Re Pointe-a-Calliere</i> (2004), 33 C.P.R. (4 th) 426.....	358

C. Authorization

<i>CCH Canadian Ltd. v. Law Society of Upper Canada</i> , [2004] S.C.J. No. 12.....	60
<i>SOCAN v. Canadian Association of Internet Providers</i> , [2004] S.C.J. No. 44.....	361

VI. Defences:

A. Fair Dealing & Fair Use

<i>Hubbard v. Vosper</i> , [1972] 2 Q.B. 84 (C.A.).....	397
<i>Beloff v. Pressdram Ltd.</i> , [1973] 1 All E. R. 241 (Ch.).....	403
<i>The Queen v. James Lorimer</i> (1984), 77 C.P.R. (2d) 262 (F.C.A.).....	411
<i>Allen v. Toronto Star Newspapers Ltd.</i> (1997), 78 C.P.R. (3d) 115 (Ont.Gen.Div.).....	414
<i>Campbell v. Acuff-Rose Music Inc.</i> , 510 U.S. 569 (1994).....	423
<i>Cie Generale des Etablissements Michelin v. C.A.W.-Canada</i> (1996), 71 C.P.R. (3d) 348 (F.C.T.D.).....	443

CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] S.C.J. No. 12.....60

VII. Moral Rights

Snow v. The Eaton Centre Ltd. (1982), 70 C.P.R. (2d) 105 (Ont. H.C.).....473

